UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

S&L VITAMINS, INC.,
Plaintiff/CC Defendant,
- against -
AUSTRALIAN GOLD, INC.,
Defendant/CC Plaintiff.

AUSTRALIAN GOLD, INC.,
Third-Party Plaintiff,
- against -
LARRY SAGARIN AND JOHN DOES 1-10,
Third-Party Defendants.

DEPOSITION OF STEVEN MERCADANTE

New York, New York

Wednesday, March 1, 2006

Reported by:
MICHELE ROSSI, RPR

Dockets.Justia.com

March 1, 2006
9:20 a.m.

DEPOSITION of STEVEN MERCADANTE, held at the offices of MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C., 666 Third Avenue, New York, New York 10017 before Michele Rossi, a Registered Professional Reporter and Notary Public within and for the State of New York.

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BY: SCOTT D. MATTHEWS, ESQ.

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666 Third Avenue
New York, New York 10017
BY: FRANCIS J. EARLEY, ESQ.

IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties hereto that the sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

S T E V E N M E R C A D A N T E, stating his residence as 22 Gregg Lane, Coram, New York, having been duly sworn by the Notary Public (Michele Rossi, RPR), was examined and testified as follows:

EXAMINATION BY MR. MATTHEWS:

Q Would you please state your name for the record?
A Steven Mercadante.
Q Mr. Mercadante, what is your address?
A 22 Gregg Lane, Coram, New York.
Q And what is your age?
A 28.
Q Are you married?
A Yes.
Q What's your wife's name?
A Renee.
Q Do you have any children?
A No, we don't.
Q And does Renee have the same last name as you? Is she also Renee Mercadante?
A Not as of yet.
Q What is her last name?

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A Eisaid.
Q How do you spell that?
A E-I-S-A-I-D.
Q How long you have lived at your current address?
A Just over a year.
Q Where did you live before that?
A I lived at an apartment in Hauppauge, Long Island.
Q What was the address there?
A 406 Devonshire.
Q How long did you live at that address?
A 2 years.
Q How long have you been married, I'm sorry?
A 4 months.
Q Where did you attend high school?
A Commack High School.
Q Where is that located?
A Also Long Island, Suffolk County.
Q What year did you graduate?
A 1995.
Q Did you attend college after that?
A I went to Mount St. Mary College, which

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is upstate, Newburgh, briefly and then I went to Suffolk Community College and obtained an associate's degree in business administration.
Q When did you attain your associate's degree from Suffolk?
A I believe it was 1998.
Q It was business administration; is that correct?
A Yes.
Q What did that entail?
A General business.
Q What types of business courses did you take?
A Business math. It was actually the only one that I got anything out of. The rest of them, some business laws. That's all I can remember.
Q What did you study in your business law class, what type of issues did you study?
A It was very, very vague and broad.
Q Did you study anything regarding contracts?
A Sure.
Q Do you remember anything from your

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business law class about contracts, in particular?
A Somewhat. We didn't go too far into depth.
Q But you understand what a contract is?
A Sure.
Q The other college you attended was Mount St. Mary College?
A Yes.
Q What kind of classes did you take there?
A I was there for one semester. I took a another business class, which I cannot remember which type of business it was, English, psychology. Five classes, I took up there. That's all I can remember.
Q Why did you transfer to Suffolk Community College?
A I had an athletics scholarship for baseball, which had partial academics that I didn't meet the requirements.
Q At Mount St. Mary College?
A Correct.
Q You were this one semester at Mount St. Mary?

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A One semester.
Q Have you had any additional college or post-high school classes other than what you've described for me?
A No, sir.
Q Have you had any training on the Internet?
A No.
Q Starting from high school, would you run through your employment history for me?
A I worked for a friend's business, an ice cream distribution route here in Manhattan. They also had a Greek restaurant on Long Island. And I was there from 1994 to 1999, I believe.
Q What was the name of that business?
A Athenian.
Q And they operated both ice cream distribution and a Greek restaurant?
A Under the same name, yes.
Q Under the same name. Where were they located?
A East Northport, New York.
Q Do you remember a street address?
A 6 Lido Court.

Q Who was your direct supervisor there?
A John Homenides.
Q Was he the friend you're talking about, I believe you said this was a friend's business?
A Yes.
Q And Mr. Homenides, was your friend?
A Actually, his younger brother was a friend. I'm a friend of the entire family.
Q What did you do for the business while you were there between 1994 and 1999?
A Distribution here in the city, helper for the truck driver and short-order cook.
Q When you say distribution in the city, did you actually deliver the ice cream?
A Yes.
Q Did you have a route that you --
A Yes. It wasn't mine specifically, but I did work with the person who had the route.
Q Did you do that by a truck and then go to different stores and sell ice cream?
A Exactly.
Q Who were the customers of the ice cream?
A Mostly -- some delis. They do bulk ice cream in 3 gallon tubs and also at the time,

Haagen-Dazs, things that you would find in local delis around here.
Q Do you know if those ice cream customers had contracts with your employer?
A I don't know.
Q And then you were a short-order cook as well?
A Yes.
Q In '94, you were still in high school?
A Correct.
Q Was this a full-time job at any point between '94 and '95 or was this always part time?
A No. Not between '94 and '95, it was not.
Q It was part time?
A Part time.
Q So you worked for Athenian while you were --
A While I was in high school, summers and --
Q And in college?
A Well, while I was at Suffolk, yes. At Mount St. Mary, no.
Q When you obtained your associate's

degree from Suffolk, after that, what did you do for employment?
A I worked with them full time, I believe a year or so.
Q With?
A With Athenian.
Q With Athenian?
A Yes.
Q What was your position with Athenian?
A Same, just more hours.
Q Were you paid on an hourly rate?
A Daily.
Q Do you remember what you made at that time when you left?
A 70 bucks a day.
Q Why did you leave Athenian?
A 70 bucks a day.
Q What did you do after that?
A Well, towards the latter part of it, Larry Sagarin was a friend of John Homenides. So we had mutual friends. I worked part time for him for a couple of months towards the end of my stay at Athenian. At which time, we ventured into our own business.

Q So this would have been in 1999, you started working part time for Larry Sagarin?
A It was latter part of '98, '99, around there. I can't remember correctly.
Q So there was a period of transition where you're still working for Athenian, but also working for Mr. Sagarin?
A Correct.
Q What was the name of Mr. Sagarin's business in late '98 or 1999?
A Body Source.
Q What was the nature of that business?
A Sports nutrition retail store.
MR. COLEMAN: Steve, I just want to remind you to make sure that Chris finishes his entire question before you answer --
MR. EARLEY: Scott.
MR. COLEMAN: Or the famous baseball players, Chris Matthews, if he asks any questions also.
Please wait until he finishes the entire question so the reporter can hear the entire question.
A I apologize.

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Q How did you become acquainted with Larry Sagarin?
A Through John Homenides.
Q Do you remember the first time you met Larry Sagarin, under what circumstances you met him?
A I believe he came in as a customer, so I cooked him many meals. I don't remember the exact first time, no.
Q How did your relationship with Mr. Sagarin develop to where he offered you part-time employment?
A At the time he was having his first child, he was working 7 days a week, he needed some days off.
Actually, as a favor to, at the time, my boss, John, I did a favor for him to work for Larry one or 2 days a week to give him a day off.
Q So Mr. Homenides requested you help out his friend Larry Sagarin by working a couple of days a week?
A That's correct. I enjoyed the sports nutrition at the time, so I enjoyed the job.
Q What exactly is sports nutrition, is

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that pills and supplements and things?
A A lot of it is, protein powders, creatines, a little bit more limited now, fat burners, protein bars.
Q And how is it more limited now than it was in 1999?
A Well, we used to sell products called Andro, A-N-D-R-O, which are no longer available, they were a big part of sales back then.
Q And Andro was banned by the FDA for retail sales; is that correct?
A That's correct.
Q Do you remember when that was?
A Exactly, no. I believe it went through late 2003, early 2004.
Q What percentage of Body Source's business, from the time you started to the time Andro was banned, was Andro?
A Percentagewise in sales?
Q Yes.
A I really couldn't say exactly. I would guess maybe 10, 15 percent, I would guess.
Q Was Andro one of the biggest sellers for Body Source?

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A No, never was.
Q How did the ban affect Body Source?
A It didn't much. Manufacturers had come out with replacement products, so to speak, to help in the market.
Q At some point in time, I take it you became full-time employed by Body Source and Larry Sagarin; is that correct?
A Yes, sir.
Q How did that come about?
A We went in to open a store together, which is the Lindenhurst location.
Q Prior to opening the Lindenhurst location, where was Mr. Sagarin operating Body Source?
A I believe it was East Northport. It may have been Northport. I'm not correctly sure. I don't know the address.
Q Down the road, it was on?
A Jericho Turnpike, I believe.
Q Can you describe the physical location for me?
A Small store. I would guess 600 square feet. Half of it had some gym equipment in the

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back room and the front part was vitamins and supplements.
Q Was the gym equipment for sale as well?
A No. No.
Q What was the gym equipment in the store for?
A Personal use, I believe.
Q So the business of Body Source at that time when it was on, you said Jericho Turnpike?
A I believe Jericho.
Q Then I'll refer to it as the Jericho Turnpike location just for clarity here?
A Okay.
Q What types of products were sold, just nutritional supplements and vitamins and things of that nature?
A Correct, supplements.
Q Were there any other products sold by Body Source at that time when you were working there as a part-time employee?
A No.
Q Who else worked for Mr. Sagarin at that time?
A Myself.

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Q Anyone else?
A No.
Q What were the hours of operation at the store?
A My hours were Sunday 12 to 4. During the week, I'm not sure what the hours were.
Q The store was open 7 days a week?
A Yes.
Q It's your understanding that it was just Mr. Sagarin working in the store himself?
A I believe so.
Q So you worked 1 day a week to give him a day off?
A Yes.
Q I thought you said earlier you worked a couple of days a week. Did that change over time where your hours increased?
A No. I might have filled in another day here and there when I was able to.
Q How did Mr. Sagarin compensate you?
A Check.
Q What was your rate of compensation?
A $40.
Q A day?

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A Yes, 4 hours, $10.
Q $10 an hour?
A Yes. Sometimes I trade it for supplements.
Q So you worked on Sundays from 10 to 4 for a couple of months and then decided to go into business with Mr. Sagarin?
A That's correct.
Q Do you remember the month and year that you and Mr. Sagarin decided to go into business?
A January 1999. As a matter of fact, the first day that we were open was January 30, 1999.
Q And where did the store relocate to as of January 30, 1999?
A The store that was open on January 30, 1999 which is Lindenhurst, and it's still.
Q And the address of that store?
A 308 East Montauk Highway.
Q And you've been employed and/or the owner of the store that does business as Body Source from January 1999 through the present?
A Correct.
Q Have you held any other jobs during that time?

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A No.
Q Is the Body Source or S&L Vitamins, Inc. now your sole source of income?
A It is.
Q Mr. Mercadante, have you ever been charged with any crime?
A No.
Q Have you ever given your deposition before?
A No.
Q Have you ever testified at trial?
A No.
Q Mr. Coleman will give a little bit of the groundwork. I just wanted to get a little basic information, but as we get going today, we will anticipate each other's question or response.

And so it's easier if we try to wait and listen to the full question and then I will not interrupt you and let you give a full answer.

If there's any question you don't understand, please ask me to rephrase it or tell me you don't understand it. Okay?
A Yes, sir.

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Q And otherwise, I'll assume you understand my question.
A Okay.
Q And finally, it is important to give a verbal response to my answer, which you're doing a good job of, but yes or no, rather than shaking your head or shrugging your shoulders.
A I understand.
Q Have you been involved in any previous lawsuits?
A No.
Q What about your company?
A Yes.
Q For the record, your company is S&L Vitamins, Inc.?
A Yes.
Q How many lawsuits has S&L Vitamins, Inc. been involved in?
A In the past?
Q Yes.
A One.
Q So two lawsuits, total the one with Australian Gold and then a previous lawsuit?
A And one that is current as well.

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Q Why don't you identify what lawsuits S&L Vitamins has been or is currently involved in.
A Has been with a company called California Tan.
Q And currently?
A Yourselves and Designer Skin.
Q Tell me about the California Tan lawsuit, what was that about?
A I believe, I didn't really get much into the legalities of it. It was about contract infringement, copyrighting, I believe.
Q Where was that lawsuit pending? Do you know where it was filed? Did you litigate here or in California?
A California.
Q Did you not give a deposition in that case?
A No.
Q Did anyone from your company give a deposition in that case?
A Yes.
Q Who were the persons that gave depositions in that case?
A Larry Sagarin.

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Q Were you asked to give a deposition in that case?
A No, sir.
Q Were you identified as one of the owners of S&L Vitamins by California Tan?
A I would have been, had they asked.
Q Did S&L Vitamins or Mr. Sagarin represent that he was the only owner of S&L Vitamins?
A I don't know.
Q Did you read Mr. Sagarin's deposition?
A I did not.
Q Did you talk to Mr. Sagarin about his deposition in that case?
A Somewhat.
Q What did you talk about?
A It was lengthy.
Q Okay.
A So, obviously, we didn't cover all aspects of it.
MR. COLEMAN: There is a joint defense privilege, obviously, in terms of they as codefendants had any discussions that they would have had regarding legal strategy and

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the like.
You can ask your questions. In other words, in this case, for example, they're named individual defendants. They're also owners of the company, so they're not necessarily obligated to disclose any discussion that they had about the conduct of the litigation.
I'm not stopping your asking the questions; I'm just kind of throwing up a flare here.
MR. MATTHEWS: And we have only sued Larry Sagarin because at the time, we did not know about Mr. Mercadante. We thought Mr. Sagarin was a sole owner.
MR. COLEMAN: What time was that?
MR. MATTHEWS: At the filing of the lawsuit by S&L Vitamins against our client.
MR. COLEMAN: And how about the time of the deadline to add your parties?
MR. EARLEY: Steve's a nonparty.
MR. MATTHEWS: I understand that. In this lawsuit, he's not a party.
MR. EARLEY: Right.

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MR. MATTHEWS: I thought he testified in the California Tan lawsuit, he was not a party.
MR. COLEMAN: I don't think he was. It may be in Designer Skin. Let me make it more clear. Steve was certainly -- certainly, Steve is an owner, is and was employed as well by the corporation.
All I'm saying, I don't really mean to testify about the corporate structure nor could I, but to the extent that they had discussions about the litigation, he's not -- I can instruct him at a certain point not to answer.
MR. MATTHEWS: I'll just ask my questions and if you want to do that, that's your prerogative.
Q What was the resolution of the California Tan lawsuit?
A A settlement.
Q California Tan, actually, won a summary judgment against S&L Vitamins; isn't that true?
A I believe so, yes.
Q Who decided to settle the California Tan

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lawsuit?
A Not myself.
Q Who on behalf of the company decided to settle that lawsuit?
A Larry Sagarin.
Q By himself, did he consult with you?
A Sure.
Q Did you approve the terms of that settlement?
A I did.
Q Who signed the settlement agreement, Larry Sagarin or yourself?
A We both did.
Q Generally, what were the terms of that settlement?
A A settlement figure as well as an agreement to not continue to sell the product anymore.
Q Did you enter into any type of an injunction with the court where the court made that an order that you wouldn't sell the products or is it just a private settlement agreement?
A I don't really understand what injunction means, sorry.

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Q Did the court approve the settlement, do you know?
A Yes.
Q How much money did S&L Vitamins pay California Tan?
MR. COLEMAN: You can tell him.
A $35,000.
Q Did you consider that a significant sum of money?
MR. COLEMAN: Object to the form. You can answer, Steve.
A Absolutely.
Q You know California Tan issued a press release saying that it was a significant sum of money that they settled the case for?
A I read that.
Q How was that lawsuit funded was that funded out of your own personal bank accounts or the corporate assets of S&L Vitamins?
A Well, the only corporate asset is our bank account. So it was personal and corporate funding.
Q Did you and Mr. Sagarin both contribute personal funds to the settlement of that lawsuit?

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A Yes.
Q How much did you contribute?
A Lost wages.
Q I'm sorry, I don't understand that.
A I couldn't get full pay.
Q I still don't understand your response.
My question was, how much did you personally write a check for to settle the lawsuit?
A Oh, I'm sorry. No, I did not personally write a check.
Q But your answer about lost wage, was that referring to the fact that you couldn't afford to pay yourself money because of settling the lawsuit?
A Right.
Q What about Mr. Sagarin, what did he personally contribute of his funds to settle this lawsuit?
A He was the same as me.
Q Which means, no money out of his personal account just out of the corporate checking account?
A Correct.

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Q The Designer Skin lawsuit, where was that filed?
A I believe that's ongoing.
Q Is S&L Vitamins a plaintiff in that lawsuit? Did you file the lawsuit?
A We did.
Q Did you file here in New York?
A Yes, we did.
Q When was that lawsuit filed?
A I believe October.
Q Let me back up to California Tan for a minute.
Had California Tan sent S&L Vitamins or Body Source any type of a letter? Was there any communications concerning your sale of California Tan products on the Internet?
A Yes.
Q Tell me about that. What did S&L Vitamins receive from California Tan?
A I can't remember exactly. It was a cease and desist. I believe it was regarding infringing contracts. The reason we sought counsel on that was because we had no contracts with California Tan.

Q I'll save Mr. Coleman some words.
I don't want you to tell me anything you discussed with your counsel, but after California Tan sent you a cease and desist letter, did you contact counsel?
A Yes.
Q Did you have any communications with California Tan?
A I did not, no.
Q Did Mr. Sagarin have any communications with California Tan?
A I think they did give him a phone call.
Q Mr. Sagarin did call California Tan?
A No. At that point, they called him.
Q Do you know the substance of that conversation?
A Stop selling it now or we're going to sue you.
Q Do you know who he spoke with at California Tan?
A I don't know who it was.
Q At any time, have you ever spoken with any representative of California Tan or their attorneys?

A I have not.
Q Did California Tan explain to S&L Vitamins that it had a policy that its tanning lotions were only available for sale in the retail salons?
A After the cease and desist letters we became aware that that was their particular policy, yes.
Q Did you abide by their policy?
A No. That's why we took it to court.
Q Why did you decide to fight that in court rather than abiding by their request to not sell their products on the Internet?
A I abided by the ruling of the court, not by the ruling of California Tan.
Q Did you also file a lawsuit against California Tan in New York?
A No.
Q There wasn't a lawsuit pending in New York filed by S&L Vitamins and a lawsuit pending in California filed by California Tan, they actually were consolidated?
MR. COLEMAN: I'll clarify the record. There's no reason the record should be

unclear about this, so you can ask your questions appropriately.
There was an Eastern District action filed before we received confirmation that California Tan had filed first in California. Once we learned that California Tan had already filed. Then we voluntarily dismissed the Eastern District action.
MR. MATTHEWS: And it was litigated in California?
MR. COLEMAN: Entirely.
Q And what I was getting at, and thank you for the clarification, Mr. Mercadante, was prior to California Tan, you have knowledge that California Tan had sued you, did not S&L Vitamins make the decision that they would sue California Tan?
A In a counterclaim. Honestly, I have no knowledge of the legalities. I really don't.
Q Did you receive cease and desist letters from Designer Skin?
A Recently, yes.
Q When was that?
A September, October, I believe, of 2005.

Q Of 2005, thank you. What was the substance of the cease and desist letter from Designer Skin?
A Just to go back, I believe there was one about a year or so ago, as well. Where, through counsel, we had explained how we operate and then that was it. We hadn't heard from them.
At the time of the more recent cease and desist, I was on vacation, so I was not around.
Q And again, what was the substance of the cease and desist letter from Designer Skin?
A I didn't read it.
Q Do you have an understanding now of what they were complaining about?
A I assume it's similar to why we're here now.
Q Which is the sale of the Designer Skin products by S&L Vitamins on the Internet?
A Correct.
Q Was the original cease and desist letter from Designer Skin sent about a year ago?
A I'm not exactly sure.
Q Was it sent by Designer Skin or did they have a law firm that sent the cease and desist

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letter?
A I don't remember.
Q Did you have any conversations with Designer Skin?
A I did not.
Q Did anyone who represents or is affiliated with S&L Vitamins have conversations with Designer Skin concerning either cease and desist letter?
A The more recent one, yes.
Q And who had conversations with Designer Skin on the more recent cease and desist letter?
A E-mails with Larry Sagarin and the president of Designer Skin, I believe, his name is Brad.
Q Brad Grossman?
A That sounds familiar, yes.
Q Has Designer Skin filed a lawsuit against you or counterclaims?
A I believe so, yes.
Q Have any depositions occurred at the Designer Skin lawsuit?
A No.
Q Have any claims been dismissed?

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A Not that I'm aware of.
Q So S&L Vitamins has only been involved in three lawsuits in its existence?
A Two that are current. One that is past.
Q And all three with tanning lotion manufacturers?
A That's correct.
Q And all three tanning lotion manufacturers essentially making the same complaint about S&L Vitamins' sale of products on the Internet?
A Correct.
Q What led to you and Mr. Sagarin deciding to form a new business and sell supplements together?
A Larry and I got along very well at the time. I was an athlete at the time and I used supplements myself. I enjoyed reading about them, studying them.
Working part time as I did, I enjoyed speaking to the customers that came in about it. To me, it was a much more enjoyable job than a short-order cook.
Q You said at the time you were an

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athlete, were you playing sports?
A Playing sports and body building.
Q Did you and Mr. Sagarin lift weights together?
A No.
Q Is there a difference between body building and weightlifting or working out at the gym?
A Significant.
Q Can you explain that because I profess that I don't know the difference between guys who work out at the gym and body building?
A Sure. Well, weightlifting and working out, I'm sure to some people it's completely opinionated, but weightlifting working out is purely for exercise, standard shape. Body building is something that is a 24-hour commitment. It is a sport in itself.
Q You did compete, I presume?
A I never did compete, no.
Q When you say it's 24-hour commitment, what do you mean by that?
A Well, it's not just the hours you put in the gym. It's the hours that you put in your

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sleep and your diet.
Q Do you still do body building?
A No.
Q How long has it been since you gave up body building?
A Well, I gave up weightlifting, I would say, 3 years. Body building was a short stay after I stopped doing other competitive sports.
Q What other competitive sports did you play?
A College baseball, high school baseball, football.
Q Did you and Mr. Sagarin train together?
A Never. Larry was a little bit more advanced than I was.
Q He's quite a bit bigger?
A Quite, quite a bit. You'll see.
Q Were you and Mr. Sagarin friends outside of work?
A Before that, no.
Q But during that time when you were working part time, did you become social acquaintances, friends?
A Not necessarily, no, not so much.

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Q Well, you said, I'm trying to figure out how your relationship with Mr. Sagarin developed. When you were working on Sundays, he wasn't in the store, right?
A Right.
Q So how did your relationship develop into a situation where you decided to become business partners?
A Well, obviously I was working for him, running his store by myself, so obviously he would call and find out how it was. I'm sure he was keeping tabs on me, checking up on me. And through those conversations, we got to know each other better.
Q Was Mr. Sagarin having any legal issues or problems that caused him to not go into business with another partner?
A No.
Q Was Body Source, the company that you worked for for Mr. Sagarin, was that incorporated, do you know?
A I believe so.
Q Was that Mr. Sagarin's company 100 percent?

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A I believe so.
Q And then on January 30, 1999, you and Mr. Sagarin opened your business?
A That's correct.
Q Is that around the time that S&L Vitamins, Inc. was formed?
A Exactly the time.
Q And what does S&L stand for, Steve and Larry?
A Correct.
Q What assets did S&L Vitamins acquire when it opened the door?
A Inventory.
Q What did the inventory consist of?
A Sports nutrition supplements.
Q What was the amount of inventory it acquired?
A I believe it was $15,000, thereabouts.
Q In products?
A Yes.
Q What about equipment, office furniture, things of that nature, did it acquire that as well?
A About the same.

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Q I'm sorry about another $15,000 in assets?
A Yes.
Q Were there any vehicles involved that were acquired by S&L Vitamins?
A No.
Q Were there any legal documents showing a transfer of assets of Body Source, Larry Sagarin's business, to S&L Vitamins?
A Absolutely not. They were both in operation at the same time.
Q I'm sorry, I don't understand that.
A Well, Larry Sagarin had agreed to do the Lindenhurst location with me to open a second store, actually, a third store at that time.
So the original one was still operative under its own corporation. I had nothing do with it.
Q That was Jericho Parkway, you believe?
A Turnpike.
Q Turnpike, I'm sorry. Then there was a second store. Where was the second store located?
A Miller Place.

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Q When was that opened?
A I'm assuming 1997, '98.
Q How long did Miller Place stay in business?
A It still is.
Q Who runs Miller Place?
A Larry does, Larry's mother.
Q What's Larry Sagarin's mother's name?
A Helen.
Q What's her last name?
A Sagarin.
Q Do you know where she lives, what town?
A No.
Q Does she live on Long Island somewhere?
A Yes.
Q So Body Source, Larry Sagarin's business, had two locations, Jericho Turnpike and Miller Place. Did Miller Place open in '97 and is still operating?
A About '97, I'm not exactly sure on that date, but yes.
Q What's the name of the Miller Place business, what's it called?
A Body Source.

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Q If I walked in the store, I'd see a sign that said Body Source?
A Yes, sir.
Q Where is it located, as far as, is it in a retail shopping area?
A Yes, it is.
Q How big is the store?
A It's about the same as the store in Lindenhurst thereabouts. I'm going to guess 900 square feet.
Q How many employees work at the Miller Place store?
A Just one, well, including Larry, two.
Q Larry and/or his mother?
A Correct.
Q Helen Sagarin, okay. What are its hours of operation?
A 11 to 7 Monday through Friday and I believe 11 to 6 Saturday.
Q In addition to the body supplements, nutrition products, are any other products sold out of the Miller Place store?
A Not that I'm aware of. I'm never there.
Q Are any tanning lotions sold out of the

Mercadante 43

Miller Place store?
A I think she has two or three bottles on the shelf.
Q Do you know why she only has a couple of bottles on the shelf?
A Convenience.
Q Who owns the Miller Place store today?
A I don't know how that corporation is formed.
Q Is that a different corporation?
A Yes.
Q What corporation is that?
A I don't know.
Q Who owns the corporation?
A I don't know who is the owner of that corporation.
Q Is it Larry Sagarin?
A I don't know.
Q Well, you said Body Source has three stores?
A That's correct. Well, now we have two. The Northport one, I said, is closed.
Q Is closed?
A Right.

Mercadante 44

Q So you have Montauk and you have Miller Place?
A That's right.
Q And your website says you have two New York locations?
A That's correct.
Q So you're the owner of S&L Vitamins?
A Correct.
Q Your website says you have two locations?
A Correct.
Q And you're telling me you don't know who owns that second location?
A I don't know who the corporate officers are, no, I don't.
Q Why not?
A It's not a business.
Q It's not S&L Vitamins' business?
A No.
Q So your website is false when it says you have two New York locations?
A No.
MR. COLEMAN: Object to the form.
Q How is that not false, Mr. Mercadante?

Mercadante 45

A The website doesn't say, S&L Vitamins has two New York locations. The website says Body Source has two New York locations.
Q And Body Source is the name under which S&L Vitamins does business?
A Correct.
Q How is that Body Source different from the Body Source on Miller Place?
A Different corporation. I assume it's the same type of a situation as a GNC that would be located in Smithtown that's privately owned and a GNC that's located in Kings Park that's privately owned, same name.
Q Do you receive a franchise fee from the Miller Place Body Source store?
A No.
Q Do you have any franchise agreement with Miller Place Body Source store?
A No.
Q Who supplies the Miller Place Body Source store with products?
A They buy their own.
Q Does S&L Vitamins buy the supplies and then sell them to Miller Place?

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A No.
Q Does the Miller Place store have a separate checking account?
A Yes.
Q Does S&L Vitamins pay any bills for the Miller Place store?
A No.
Q Does it sign any contracts on behalf of the Miller Place store?
A No.
Q So in January of 1999, when you and Mr. Sagarin decided to go into business, he had the Jericho Turnpike and Miller Place store and it was your intention to partner with him and open a third location on Montauk Highway; am I understanding that right?
A I'm sorry, could you repeat that.
Q Yes. At the time in January 1999, doing business as Body Source, at two locations, Jericho Turnpike and Miller Place, correct?
A Yes.
Q And your intention with respect to going into business with Mr. Sagarin was to open a third Body Source store on Montauk Highway?

Mercadante 47

A That's correct.
Q And a new corporation was formed to operate the Body Source store on Montauk Highway?
A That is correct.
Q So none of the assets of the Jericho Turnpike store were transferred to S&L Vitamins or they were?
A No.
Q And none of the assets of Miller Place were ever transferred or given to S&L Vitamins to operate the Montauk location?
A No.
Q Where did S&L Vitamins acquire its inventory?
A We bought it from the same distributors that those two locations used.
Q So S&L Vitamins has always consisted of one location, one store?
A Yes.
Q How much capital did you have to put into S&L Vitamins?
A To start?
Q Yes?
A $15,000.

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Q And what did Mr. Sagarin contribute?
A $15,000.
Q Have you made additional investments of capital into S&L Vitamins since that initial $15,000 contribution?
A Absolutely.
Q How much capital have you invested in that business?
A I couldn't say.
Q Is it over a $100,000?
A No.
Q Is it over $50,000?
A No.
Q Somewhere between $15,000 and 50,000?
A I have no idea.
Q I'm just trying to get a range.
A I couldn't put a number on it. I mean, I know obviously starting a new business, a small retail business, the first couple of years are tough. There's not too much money getting paid out. So I do believe that time is something I sacrificed into the business.
Q When you opened S&L Vitamins, was there any partnership or shareholder agreement between

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you and Mr. Sagarin?
A Well, it was actually, the corporation was opened up between myself and Laura Fanning, who is Larry Sagarin's wife.
Q So and you Mr. Sagarin decided you wanted to go into business together in January of 1999 and then you and his wife opened a business?
A Yes.
Q Why did that happen?
A As far as Laura Fanning being on there, that was Larry's decision on his half. I didn't object to it. I didn't ask questions.
Q You never asked, well, why do you want your wife to own this?
A No.
Q Why not?
A I didn't really care.
Q Yes, but you're a business partner with him. Doesn't it seem like a reasonable thing to know why he doesn't want to be --
A No, they're married. It's not like he was asking his neighbor or somebody down the street.
Q And Mr. Sagarin never said anything

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about legal problems or other issues that might prevent him from owning a business?
A No.
Q Are you aware of Mr. Sagarin's criminal record?
A No.
Q Do you know he has a criminal record?
A No.
Q Do you think that might be important for you to know?
A I know he hasn't been in jail in the past 7 years.
Q And how do you know that?
A I've been working with him for 7 years.
Q What discussions did you have with Laura Fanning about her being a 50 percent shareholder of S&L Vitamins?
A None.
Q What's Laura Fanning's role in the business?
A None.
Q Is she employed by the company?
A No.
Q Does she have any authority to bind

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company contracts, to enter into agreements?
A No.
Q She's an officer of the company?
A Yes.
Q What is her title?
A I believe it's vice president.
Q She's a vice president of S&L Vitamins, Inc., but she doesn't have any authority to bind the company?
MR. COLEMAN: I object to the form. You know that the deponent is not an attorney. I think he's answering based on his practical understanding of how the business operates or not.
MR. MATTHEWS: I understand. You may still answer.
A Can you repeat it?
Q Yes. She's a vice president of the company, but you're saying she doesn't have the authority to make business decisions as far as entering into contracts and things of that nature for S&L Vitamins?
A If there was a certain contract that was to be signed, I'm sure that we would know about

Mercadante 52

it. If we had a problem with it that we couldn't figure out between us, and it would be taken to legal matters, then I don't know how that would turn out. I'm not a lawyer.
Q Let me just try not to -- I mean, I understand your lawyer's objected, so you're trying to answer in accordance with his instructions there, but I just want to know --
A I am trying to answer to the best of my ability.
Q I understand. But what I want to know is, can Laura Fanning go sign a contract on behalf of the company?
A Certainly not without my consent legally. I'm not a lawyer.
Q I'm not asking you legally, I'm just talking practically?
A Without my consent, without Larry's consent, no.
Q Laura Fanning, couldn't, for example, agree to settle this lawsuit today without talking to you or Mr. Sagarin?
A On her own?
Q Yes.

Mercadante 53

A No.
Q Does Ms. Fanning have check-writing authority?
A No.
Q Has she ever drawn a paycheck from the company?
A No.
Q Is she compensated as a shareholder from the company, any distributions made by the company to Ms. Fanning?
A No.
Q Does she come by the business?
A I think she stopped by once. It wasn't business-related.
Q In 7 years?
A Yes.
Q So putting the legalities aside, S&L Vitamins, Inc. is essentially your company and Mr. Sagarin's company, as far as the operations and management of it?
A That's correct.
Q As far as who is the ultimate decision maker, does Mr. Sagarin have more authority or do you or do you run things by each other and it's

Mercadante 54

kind of a mutual process, as far as making decisions about the business?

A It depends on the decision.

Q How so? Give me an example. What decisions does Mr. Sagarin make on his own without consulting you?

A Can you give me an example of a decision that --

Q Yes. Well, let's just go through some things. Who orders products?

A We both do.

Q Who keeps the books?

A My accountant.

Q Who writes checks for the daily operations?

A We both do.

Q Who negotiates leases?

A Larry does.

Q Do you have any supply agreements with vendors?

A As to what?

Q Products.

A That would include what?

Q Any product you sell.

Mercadante 55

A Other than the fact that if we want to sell it, we have to pay for it, no.

Q Who negotiates prices on items you sell?

A That depends. Larry usually would do that on initial startups. As the relationship grows, I may negotiate a little bit on pricing.

Q Why does Larry do that on the initial startups?

A He's a better negotiator than me.

Q Do you know what the financial condition was of the Body Source in 1999 when just Larry owned it and he had the two stores on Jericho Turnpike and Miller Place?

A No.

Q Did you have discussions with Larry as to why he wanted a business partner and open a third location?

A I'm sure the thought of having a third store to generate more income for himself was good enough.

Q Why didn't he do it himself, I guess is what I was asking?

A Three stores on his own is kind of tough to do. He would have to hire an employee to

Mercadante 56

trust. I had the initiative. I split half of the startup fees.

Q Who is the tie breaker, 50-50 ownership, I know it's Laura Fanning, but I think you've testified that it's you and Larry who jointly make the decisions. Who is the tie-breaker, if you guys are deadlocked on something?

A It depends on the decision. It depends on -- it depends.

Q Do you have any procedure for breaking ties?

A Obviously not fighting.

Q So I take it that's no?

A No.

Q Did Mr. Sagarin share with you any financial statements or other documents to show what kind of revenues you could expect or profits you could expect from your store?

A No, he did not.

Q Did you draft any type of business plan before going into this business?

A No, we did not.

Q Did you take out any loans from any financial institutions to start this business?

Mercadante 57

A No.

Q Where did you get your $15,000 initial contribution?

A Well, we don't consider my father a financial institution, do we?

Q No. That's what I was asking, where you got the money to start the business.

A My father loaned it to me.

Q Did you repay him?

A Absolutely.

Q Did he make you sign a note?

A No. We get along very well. He's actually in the emergency room right now and he has been all night.

MR. MATTHEWS: Why don't we take a break.

(A recess was taken.)

Q Who is your accountant?

A Andrew Daniels.

Q What is his address?

A I don't know.

Q I believe he was identified on some documents you produced. Do you know what city he's located in?

A Huntington.
Q Is he with a firm or is he on his own?
A He's on his own.
Q Has Laura Fanning ever signed a check for S&L Vitamins?
A No, sir.
Q Has she ever entered into a contract at any time for S&L Vitamins?
A Not that I remember.
Q Have you and Mr. Sagarin ever been deadlocked on a decision of the company?
A Disagreements occur.
Q Can you give me specifics where you and him have been deadlocked on an issue?
A Nothing that's been too detrimental outside of the normal relationship disagreements.
Q Can you give me examples of like, for instance, we disagreed or whether or not we should sue a third tanning lotion manufacturer, that's what I'm looking for, specifics where you've been deadlocked?
A No. There have never been many deadlocks on issues like that. I don't necessarily make the decisions as far as the

legal situations go. My opinions are formed.
Q Who makes the decisions with respect to the legal affairs of S&L Vitamins?
A Larry does.
Q Did you authorize Larry Sagarin to file this lawsuit against Australian Gold?
A I agreed with him on it, with yes.
Q So your opinion as to the Australian Gold lawsuit was to sue Australian Gold?
A Absolutely, yes.
Q What about the Designer Skin lawsuit, did you agree with that?
A I had to.
Q What do you mean, you had to?
A You do one, you got to do them both.
Q What about California Tan, did you agree with --
A I believe we were sued first with that one.
Q Is there a shareholders' agreement for S&L Vitamins?
A Agreement for what?
Q A written document defining the rights of the shareholders of S&L Vitamins?

A Outside of 50 percent, I'm 50 percent. She's 50 percent, I'm not aware of any.
Q Is there anywhere in writing that it's 50 percent to you and 50 percent to Laura Fanning?
A I'm sure.
Q Have you looked for any document where that's in writing in conjunction with this litigation?
A I have tried.
Q Have you been able to locate anything in writing?
A No.
Q Were stock certificates issued?
A Back in 1999, I don't remember. I don't know how that process works.
Q Was there ever a time where you and Ms. Fanning were not equal 50 percent shareholders of S&L Vitamins?
A No.
MR. COLEMAN: Off the record.
(A discussion was held off the record.)
MR. MATTHEWS: Mark this as Mercadante Exhibit 1.

(Mercadante Exhibit 1, 1120 S 2000 tax return, marked for identification, as of this date.)
Q Mr. Mercadante, I've handed you what's been marked as Exhibit 1. Can you identify this document?
A An 1120 S form income tax return for an S corporation.
Q And is that S&L Vitamins' income tax return for the year 2000?
A Yes.
Q Can you flip back through this document, go to the K-1, which is the fifth page. It lists a shareholder as Steven Mercadante.
A Okay.
Q I do not see a K-1 for Ms. Fanning.
A Okay.
Q Now, if you look, try to refresh your memory, go to the second-to-last page. This is the schedule B to the New York S Corp. return and it says, Steven Mercadante, percentage of ownership 100 percent. There's one shareholder. Do you see that?
A I do see that, yes.

Mercadante 62

Q Does this refresh your memory as to ownership of S&L Vitamins, at least for the year 2000? I don't have 1999.
A I honestly don't know.
Q Do you recall any discussions with Mr. Sagarin about you owning this 100 percent and he not showing at least an ownership of the company on the books?
A No, sir.
Q So it's still your testimony that from day 1, you and Laura Fanning owned 50 percent of the company each?
A Yes.
Q Were distributions made to Laura Fanning in the year 2000, the tax year 2000?
A Can you explain distributions, please?
Q Yes. Money that would have been left over after you paid your expenses.
A There is none.
Q On the second page of your federal tax return, it shows purchases in the amount of $207,457?
A Yes.
Q It's line 2 on Schedule A.

Mercadante 63

A Got it.
Q How did you finance those purchases?
A Checks.
Q Where did you get the operating capital or the monies to write checks to suppliers?
A Of product that we sold.
Q Did you have a line of credit with the bank?
A At that point, no.
Q Do you have a line of credit now with the bank?
A Yes, we do.
Q What's your line of credit?
A Right now, it's $100,000.
Q How much have you used with your line of credit?
THE WITNESS: Do I need to answer that?
MR. COLEMAN: Yes.
A About $96,000.
Q Does S&L Vitamins currently have any other debts or obligations?
A Outside of the line of credit, we have business credit cards. We have a very competent legal team that we're confident in.

Mercadante 64

Q Any other business indebtedness, other than credit cards, legal expenses, any significant accounts payable to suppliers?
A No.
Q What types of business credit cards do you have?
A American Express. And I believe it's a Visa card.
Q Who are the cards issued to, the name of the business or you or someone else individually?
A They are -- the credit cards are in the name of the business.
Q Who carries the American Express card?
A Well, the American Express card was just switched just recently. We actually don't carry it. We just use that for our recurring charges. Yahoo and things like that.
The Visa, I'm not sure if it's a Visa card or a MasterCard off the top of my head. But we both carry one, myself and Larry.
Q Anyone else?
A No.
Q What's your total indebtedness on your credit cards?

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A Well, we were in a different situation in the past couple of weeks to be able to pay it down. Now we're trying to pay it off month to month.
Q So is it zero, or is it --
A I'd like it to be.
Q What is it?
A It's probably -- a combination of the two American Express and the Visa is probably $7,000 or $8,000.
MR. MATTHEWS: Mark this as Exhibit 2.
(Mercadante Exhibit 2, 1120 S 2001 tax return, marked for identification, as of this date.)
Q In the year 2000, looking back at Exhibit 1, it shows gross receipts of $220,782 on line 1C. What products were you selling at that time?
A Sports nutrition products.
Q Were you selling tanning lotions?
A No. That was also our very, very first year in business, or second year in business.
Q Or first full year in business?
A Right, first full year.

Mercadante 66

Q And this just represents sales at the 308 East Montauk Highway store, correct?
A Yes.
Q Any stores that were at Jericho Turnpike or at Miller Place would not be reflected on this tax return?
A No, they would not.
Q Look at Exhibit 2. On this return, it -- is this S&L Vitamins' tax return for 2001?
A It looks to be, yes.
Q On the income line on 1C, it says, $286,664. Was that S&L Vitamins' gross receipts for that year?
A Looks that way.
Q Again, in 2001, was S&L Vitamins just selling the nutritional supplements at that time?
A Yes.
Q It was not selling tanning lotions at that time?
A No, it was not.
Q Now, again, if you go back to the fifth page of this exhibit, this is a schedule K-1 and it's issued or shows a shareholder as Steven Mercadante, correct?

Mercadante 67

A Yes.
Q And I don't see a K-1 for Ms. Fanning, would you agree?
A I do not see that either.
Q And again on the New York tax return, second-to-last page, it lists you as 100 percent ownership of the company.
A Yes.
Q Do you believe that these tax returns are incorrect because they show you as 100 percent owner?
A I would assume so.
Q Did you review the tax returns?
A Well, 2000 and 2001, I was 22-year-old kid, new to business. When it comes to IRS and income tax and things, I had no idea. That's why everything goes to the accountant. If I read through it, which I'm sure that I did before I signed it, it's accounting language to me.
MR. MATTHEWS: Mark this as Exhibit 3.
(Mercadante Exhibit 3, 1120 S 2002 tax return, marked for identification, as of this date.)
Q You've been handed Exhibit 3; is this

Mercadante 68

S&L Vitamins' 2002 tax returns?
A It looks that way, yes.
Q The sales for that year show $348,681, which represents about $128,000 -- I'm sorry, which represents about a $64,000 increase from the previous year. Had anything changed in your business to cause an increase in sales?
A Well, we were there. We generate clientele customer base, treat our customers the right way and the business grows.
Q Were you selling tanning lotions in the year 2002?
A No.
Q Again, the same questions I asked about this tax return, you're showed as a 100 percent owner and Ms. Fanning is not identified on this tax return; is that correct? Do you agree with me on that?
A I can't find it on this one.
Q Would you agree with me that you're shown as a 100 percent shareholder?
MR. EARLEY: He said he can't find the page.
MR. MATTHEWS: Oh, it's the

Mercadante 69

second-to-last page or third to the last page.
A Yes. I would agree that that's what that says.
MR. MATTHEWS: Mark this as Exhibit 4.
(Mercadante Exhibit 4, 1120 S 2003 tax return, marked for identification, as of this date.)
Q I've handed you Exhibit 4, Andrew P. Daniels, CPA, is listed as preparer on this tax return, and actually, on the previous other ones. That is your CPA?
A That is correct.
Q And he's currently your CPA?
A Correct.
Q Is he your individual accountant, as well, or does he just do the books for S&L Vitamins?
A He's my individual accountant as well.
Q What responsibility does Mr. Daniels have with respect to the books and records of S&L Vitamins? What does he keep for you?
A Each month, I send him my bank statements, check stubs, anything, any letters at

Mercadante 70

all that come in from IRS, New York State, anything that I can't make sense of goes directly to him each month.
Q Does he keep track of costs of goods sold, of sales, things of that nature?
A From deposits, yes.
Q So if you show a deposit, he treats that as if it was a sale of some product?
A Correct.
Q Does he actually review invoices or receipts to verify that your deposits are, in fact, for goods sold?
A For goods sold, no.
Q He's just going on what your deposits are?
A Right. I don't know why we'd have a deposit for anything other than something that we sold.
Q Refund check, for example, on something, so you had more money into your bank account?
A Refund check from what?
Q I don't know, from anything. What does he do to determine the cost of goods sold?
A Repeat that, please.

Mercadante 71

Q Let's just look at Exhibit 4 as an example. It says, costs of goods sold on line 2, $787,584. Who arrives at that number?
A He does. That's from --
Q Go ahead.
A I'm sorry, go ahead.
Q What information do you give to Mr. Daniels so he could arrive at the costs of goods sold?
A Check stubs, cancelled checks and our bank statements that shows the deposits.
Q Does he look at any invoices just to pay vendors?
A No.
Q So he has to look at a check and determine that this was a payment to a supplier?
A Yes. Well, I would assume that we use somewhere in 10, 12, 15 distributors or suppliers. So he knows what is a check for a product, what is a check for another expense.
Q Do you use any kind of accounting software at your place of business, like QuickBooks or something of that nature?
A No.

Mercadante 72

Q So all bookkeeping is done by Mr. Daniels?
A Correct.
Q Are there any financial records kept by you or Mr. Sagarin or someone else at S&L Vitamins at the store?
A After he's finished with the monthly statements that I mail to him, he sends them back. I do keep all bank statements, checks, any type of copies of returns that he sends to us.
Q In 2003, your gross sales rose to $898,758; would you agree with that?
A It was a beautiful thing to see, yes.
Q What caused that increase?
A That was our first year on the Internet.
Q What were you selling on the Internet at that time?
A Sports nutrition.
Q Were you selling tanning lotions in 2003?
A We may have been towards the very end. I'm not sure if it was late '03 or early '04. I can't exactly remember. The website got up and running in May of '03.

Mercadante 73

Q Again, if you look at the last page of this exhibit, your New York return shows you as being the 100 percent shareholder of this company. Do you agree with me?
A Yes.
Q Again, no explanation as to why it was listed as that?
A I don't.
MR. MATTHEWS: Mark this as Exhibit 5.
(Mercadante Exhibit 5, 1120 S 2004 tax return, marked for identification, as of this date.)
Q I've handed you what's been marked as Exhibit 5. Is this document S&L Vitamins' 2004 tax returns?
A Yes, it is.
Q The income increased significantly from 2003. What changed, if anything, about your business model or the way you did business in 2003 to 2004?
A A lot of things. It was the first full year being on the Internet.
Q First full year of what?
A Being on the Internet. It also gave us

a few months prior to 2004 to build up a clientele of repeat customers. We did -- that was also our first full year with having suntanning lotion.
Q Can you tell me of the $1.4 million in gross sales, how much of that comprised tanning lotion, any manufacturer's tanning lotion?
A I couldn't.
Q 25 percent of your business; 40, 50?
A Well, I mean we only rose about 30 percent from the year before. We're still selling supplements in 2004, so I wouldn't think it was all that much at that point.
Q Well, you rose, actually, $544,000 from 2003?
A $900,000, so 35 percent. 35 percent more in sales.
Q This shows compensation of officers on this as $22,200. Was that your salary for that year?
A Probably.
Q Did you take any other money out of the company?
A No, sir. Car expenses.

Q What type of car did you have in 2004?
A A Honda.
Q And S&L Vitamins paid for that?
A Yes.
Q Was that a lease?
A No. It was not.
Q What kind of Honda?
A It was an Accord.
Q Do you still have that car?
A No.
Q Has it been sold by the company?
A Yes.
Q What are you driving now?
A A Lexus.
Q Is that paid for by the company?
A Yes.
Q What year is the Lexus?
A 2004.
Q And what's the model?
A IS 300.
Q Is that leased or is that a purchase?
A It's a balloon factory release.
Q So at some point it becomes due and you either have to pay it off or return it?

A Right.
Q How much is the monthly payment on that?
A $485.
Q Does S&L Vitamins have any other vehicles that it is leasing or purchasing?
A We have a van.
Q What year is the van?
A That is a 2004, as well.
Q What's the make and model?
A It's a GMC. I'm not sure of the model.
Q What's the van used for in the business?
A Picking up product.
Q When you say product, are you talking about tanning lotions or all kinds of products?
A Mostly tanning lotions.
Q How much a month are you paying for the van?
A Somewhere in the ballpark of $300.
Q What color is the van?
A Brown, light brown.
Q Mr. Mercadante, in your 2004 tax returns, this is the first time I actually see Laura Fanning identified as a 50 percent owner. Does this refresh your memory as to recognizing a

change at this point in time?
A There was no change in Laura's 50 percent. I think it was an overlooked error in the beginning when our accountant was filing the returns because he was not our original accountant, so he was not with us when the corporation was formed.
At the time when Andrew Daniels was hired as our accountant, we were solely a retail storefront where I worked most of the hours. So I did most -- so I guess it was assumed I was 100 percent.
Q Somebody had to tell him to add Laura Fanning to 2004. How did that happen, do you know?
A I don't remember.
Q Could you have told him?
A I could have.
Q Do you know if Larry Sagarin talked to him about putting his wife as a partner?
A I have no idea how that -- I don't remember how that happened.
Q Does Larry Sagarin or Laura Fanning receive any compensation from the company from

the years 1999 through 2003 when she was not identified as a 50 percent shareholder?
A No.
Q None?
A None.
Q So the only person being compensated by S&L Vitamins from '99 through 2003 was you?
A That's absolutely correct.
Q During any time period, has there been any other employees of S&L Vitamins?
A 7 days a week, myself.
Q And no one else? Is that a no?
A A no for what?
Q That there's been no one else other than yourself?
A Correct.
Q Is it your testimony that Larry Sagarin is not working for S&L Vitamins?
A Larry Sagarin gets car expenses through S&L Vitamins. He is an employee of the Miller Place store.
Q It's your testimony S&L Vitamins does not employ Larry Sagarin?
A No, he is employed.

Q For S&L Vitamins?
A Yes.
Q Well, earlier in your deposition, you said S&L Vitamins didn't own the Miller Place store?
A That is correct.
Q So you just testified that he's an employee of the Miller Place store, which would mean he's not an employee of S&L Vitamins?
A Yes.
MR. COLEMAN: Object to form.
Q I'm totally confused here because you said that Larry Sagarin was employed by S&L Vitamins, correct?
A Yes.
Q In what capacity is he employed by S&L Vitamins?
A He shares for the most part, the same job descriptions that I do. He is the one that is most responsible for going out and picking up the products that we have to order. He's there every day with me doing everyday business. And he also goes to Miller Place and does what he does there.

Q So you do have help, it's not just you 7 days a week, Mr. Sagarin --
A No, sir. I never said that. 7 days a week, it was me by myself, when you had asked me from 1999 to 2003, that is correct.
Q I meant to -- my question, let me clarify that, my question is, at any time has there been any other employee besides yourself for S&L Vitamins?
A Yes.
Q And who are those employees?
A The same ones that are there right now: Myself, Larry Sagarin and Michael Neirman.
Q Those are all current employees?
A That's correct.
Q Anyone other than those at any time?
A No. Michael was an employee of Body Source from 1999, but not through S&L Vitamins.
Q Did he work at the Miller Place store?
A No, the original Northport.
Q So Larry Sagarin has actually received money from S&L Vitamins in the form of wages since 2004 to the present?
A In the way of car expenses.

Q But no salary?
A No salary.
Q What's in it for him?
A Hopefully when we get through with this, there will be some in for him.
Q What do you mean by that?
A Well, right now there's just not enough money to pay out.
Q Is he employed elsewhere?
A Well, he is employed at Miller Place, as we said.
Q And whatever he's paid from Miller Place, you don't see that, you don't know?
A It's not my business.
Q So we're clear here, is S&L Vitamins or is Larry Sagarin's other corporation which you don't know the identity of, the one selling the products at the Internet at THESUPPLENET.COM and the BODYSOURCE.COM?
A Repeat, please.
Q Which corporate entity operates and controls the sale of products on the Internet at THESUPPLENET.COM and BODYSOURCEONLINE.COM?
A S&L Vitamins does.

Q Does Larry Sagarin's other business have any ownership operation or control over either of those websites?
A Absolutely not.
Q So all revenues generated from the Internet come directly to S&L Vitamins, Inc.?
A Correct.
Q Is there any split of profits or revenues between S&L Vitamins, Inc. and Larry Sagarin's other corporation?
A None whatsoever.
Q Who are the officers of S&L Vitamins?
A Myself and Laura Fanning.
Q Mr. Sagarin is not an officer?
A Correct.
Q Does she have authority to write checks on behalf of S&L Vitamins?
A He does.
Q Does he have the authority to enter into contracts on behalf of S&L Vitamins?
A He does.
Q Is there a limit to his authority as to what type of contracts he could sign?
A I would hope before he signed any

contracts he would consult with me as I'm sure I would with him.
Q Have you given him any limit on what he can sign and cannot sign on behalf of S&L Vitamins?
A No.
Q What's his job title at S&L Vitamins?
A He was never really given one.
Q So he has no title?
A Larry.
Q Do you have a title at S&L Vitamins, other than president?
A Other than president, no.
Q And the other employee, you said, I apologize, you said his name?
A Mike.
Q And his last name?
A Neirman.
Q What is Mr. Neirman's title or job description at S&L Vitamins?
A He is a manager. He does storefront and he helps us out in the back with packing orders, customer service via storefront customers, as well as Internet customers.

Q Describe the 308 East Montauk location for me, please.
A It's on a fairly busy highway, north side of the street. It's in a small shopping center that has two vacant stores on either side, an auto parts store next to that.
Our store is 15 feet by 60 split in half, almost in half. In the front is a retail storefront which is dedicated mostly towards sports nutrition. And in the back is where we do our shipping and Internet sales.
Q Do you use any of the adjacent stores for additional storage space?
A You don't know my landlord, no.
Q In your retail store, if I walk in off the street, just describe what I find in the store, walk in the front door and what's the layout?
A As soon as you walk in, there's a small freezer on the right-hand side that has frozen chicken meals. Shelves that are loaded with protein powders, creatine supplements, diet pills, a rack right through the center, which has all sorts of protein powders.

Left-hand side is a counter with the cash register. And along the back left is protein bars. Recently, or very recently we just put a shelf up of the tanning lotion.
Q How recently was putting the shelf up for the tanning lotion?
A I'm not exactly sure, 2 months.
Q So first of this year, or the end of last year?
A Round about, yes.
Q So prior to 2 months ago, tanning lotions were only sold on the Internet?
A That's right.
Q They weren't offered in the retail store?
A If somebody did come into the store saying, we saw you guys on the Internet and wanted to stop by, then of course.
Q So if an Internet walked in the door and said, I know you guys sell tanning lotions, can I by them, you wouldn't turn them down?
A Absolutely.
Q Why did you start putting tanning lotions for sale in your retail store?

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A We had a horrible situation during the summertime with road construction that lasted, I think it was from April until about Thanksgiving weekend that killed our walk-in sales.
In an effort to regain our walk-in sales, we did try to put that up front hoping to generate a little bit more business.
Q Do you advertise sale of tanning lotions in the retail store in any outlet?
A No.
Q Any sign on your building saying we sell tanning lotions?
A No.
Q How big is the shelf that has the tanning lotions?
A It's probably about five shelves, 4 feet wide.
Q Is your complete inventory that's on your website on the shelves in the retail portion of your store?
A No.
Q Are Australian Gold products on the shelves?
A Some.

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Q How about Swedish Beauty products are they also on the shelves?
A Some.
Q And Caribbean Gold, are those on your retail store on the shelves?
A I think there's one or two, yes.
Q Of the 60-foot length, how much is devoted to retail space and then how much is the back room where there's the processing of the orders?
A Of the 60-foot length, I would say maybe 35 in the front is storefront. And the rest is for our shipping purposes.
Q So you have a sales counter and a cash register and all that, I presume?
A In the front, yes.
Q Do you have a tanning bed in the retail store?
A No.
Q What does the back half of your store look like, describe that for me?
A Two desks, computer on each, printer between the two. Right behind that is a table, I guess, maybe a 4 by 6 table where we pack.

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Behind that is shelves.
In front of that is shelves. To the side of that shelves, all with extra inventory, mostly tanning lotion products in the back.
Q How much inventory would you say you have on hand right now?
A I don't know.
Q $100,000?
A No. We order what we need for the week, that's it.
Q Do you wait to place orders after you receive Internet orders or do you try to anticipate what your Internet sales are going to be?
A Like I said, we try to order what we need for the week in anticipation for that week, fill-in orders here and there as we need it.
Q Do you have any other warehouse facility that you use to conduct business or store product?
A No.
Q Typically, who are your customers that come into your retail store?
A Most of them are men between the ages

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of, I would say, 17, 18 up to 50. More along the younger side of that.
Q Looking for nutritional supplements and things of that nature?
A Yes.
Q What about on the Internet, do you have a demographic for your customers on the Internet?
A I really couldn't say. We don't really have anything that takes that information.
Q Will you sell to anybody who places an order?
A No. We do cancel some orders. The reason we would cancel an order would be fraud or suspect thereof.
Q What do you mean, fraud?
A Well, we do have address verification for credit card numbers, so if something doesn't match up, if an order just looks suspicious, we may cancel the order.
Q If there aren't issues with fraud and the payment, though, you'll sell to anyone who places an order on the Internet?
A Within the United States, yes.
Q And the hours of your business are 7

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days a week, still?
A Six.
Q Monday through Friday?
A Yes.
Q What are the hours?
A 10:30 to 7, Monday through Friday, 11 to 6 on Saturday.
Q Why does your website say that there's two New York locations?
A It says that there's two Body Source New York locations. It says that because there is.
Q That makes me believe, though, that there's a relationship between the two Body Source stores and you're saying there's not?
A As far as financialwise, no, there's not. We are similar stores. We sell similar products. Somebody from the New York area might find us and they would rather go into the storefront, they can.
Q There's no sharing of profits or revenues of any kind between the stores?
You're looking at your counsel, I don't know why.
A Because I've answered that question.

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There is none.
Q I just want to make sure. How did you get into tanning lotions?
A There was a tanning salon that liked to sell supplements and had a gym that opened up behind it. Some he had gotten from us, small amounts. That individual was unable to pay us for it and paid us in tanning lotion.
Q What was the name of this tanning salon?
A Yucatan.
Q Where was Yucatan located?
A Smithtown, Main Street.
Q Who is the person you dealt with at Yucatan?
A Danny Sheehan.
Q That's how you got on the Internet?
A Yes. We never sold it before. We were never in the business before. Our store is known and has the reputation of being sports nutrition store. We kept it that way. We had these extra bottles of tanning lotion that we didn't know what to do with, so we put it on the Internet.
Q How much dollar value in tanning lotions did he give you?

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A No idea. I don't know.
Q Tell me about this conversation; who had the conversation with Mr. Sheehan about accepting, trading supplements for tanning lotion?
A Larry.
Q What was the nature of that conversation?
A I wasn't involved in the conversation.
Q So he brings back a big load of tanning lotion in return?
A I wouldn't say a big load, but, yes.
Q What did you do with the tanning lotion, was it immediately put on the Internet?
A Yes.
Q What year was this?
A This is late 2003, early '04.
Q When did S&L Vitamins set up its website?
A To begin setting it up or to actually start in business?
Q To begin setting it up, tell me how it got started, what gave you the idea that we ought to start selling products on the Internet?

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A Well, you see the numbers on the tax returns, $348,000 a year doesn't cut it. What can we do? Let's try a website. We did. It took a couple of months before it was designed.
Gateway performed As far as accepting credit card transactions and I believe the first month sales was, it was May or June of '03.
Q Who had the idea to start the website, was that you or Larry?
A I don't even know, we were kicking the idea around for a while. Neither one of us were really computer literate. At the time, we were really hesitant. Financially, it just got to the point where something had to be done.
Q Did you hire somebody to help you setting up your website?
A Yes.
Q Who did you hire?
A A company called Desktop Solutions.
Q Is that a local company or is that a national?
A No, it's a local company.
Q Who did you deal with at Desktop Solutions?

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A A couple of people. A gentleman's first name is Frank. I don't remember the last name.
Q Any other person that you remember?
A No.
Q What did Frank help you do?
A Well, he wanted to get an idea as to what we were looking for, what kind of products we were looking to sell, try to get a view of what the website would look like. Told us how it worked. After it was set up, he showed us how we can edit the sites and that was it.
Q Did you talk about target audiences or marketing strategies, who you wanted to reach?
A Well, yes, absolutely. That came with the conversation of, what are you guys selling?
Q And at the time in May 2003, were you selling tanning lotions?
A No.
Q Did you have any discussion with him about how to target consumers interested in tanning lotions at that time?
A No.
Q Did you select the domain names?
A Well, THESUPPLENET.COM was my idea.

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Something I thought was catchy.
Q And the BODYSOURCEONLINE.COM is your other domain name?
A Yes. That just came into effect. I don't know how long ago, maybe last year. Just because it's an easier name to remember. We found out that the THESUPPLENET.COM is hard for people to remember, hard for people to spell.
So we didn't want to lose the clientele that we did have by just taking it completely down, so we had them tied to each other.
Q So if I go to BODYSOURCEONLINE.COM or THESUPPLENET.COM, I'm going to end up at the same website?
A Yes. If I'm a user, I'll see the same thing.
Q What type of payment mechanism did you set up on your website to accept payment? How does that work?
A We sourced a credit card company to help us with that and they worked with Desktop to get that all linked up. Because as I said, we were computer illiterate, so we didn't know how to do it. And it accepts Visa, MasterCard, American

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Express and Discover, always has and it still does.
Q And then that money is deposited into a bank account?
A It goes directly into our bank account.
Q How many bank accounts do you have?
A One.
Q What bank is that with?
A Right now, it's Bank of America.
Q Do you hire Desktop Solutions to maintain your Internet presence?
A Odds and ends here and there. We really don't have much purpose to do business with them right now.
Q Who maintains your website now, generally speaking?
A It depends on what needs to be maintained. We're a Yahoo-based store. It makes it very user-friendly. For people who don't know computers, we're HTML, to control their business as far as editing products, adding products, deleting products.
Anything outside of that, as far as changing the image, the complete image of it,

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things like adding on domain names to have them tie in, that we would go to Desktop for.
Q But as far as adding products, adding Australian Gold tanning lotions to the website, who does that?
A Either myself or Larry.
Q Both of you are proficient in that?
A Yes.
Q Would you say you're more in charge of the computer aspect or Larry is or is it equal?
A Originally, I was. Now it's gotten to be more equal.
Q So Mr. Sheehan and Yucatan gave you some products in exchange for you providing them supplements?
A That's how it began.
Q Pardon me?
A That's how it began.
Q That was not planned that way it just occurred because he couldn't pay for it?
A Correct.
Q What did you do to put the products on the Internet?
A Go onto the manager page of the Yahoo

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and you click the button that says add item. And you follow it from there. It's pretty simple.
Q Did you take any steps with respect to the Yahoo pay-for-placement service? Do you know what I'm talking about, pay-for-placement sponsored results?
A I don't what you're talking about. I don't handle that aspect.
Q Who does that?
A Larry does.
Q Do you know if anything was done with respect to being a sponsored result for tanning lotions or Australian Gold or Swedish Beauty?
A I don't. I do know that when you're a Yahoo store, you do have special preferences as far as being listed on Yahoo just because you're a Yahoo store and you pay them dues. As far as pay per clicking, I don't know.
Q What about the medatags, do you know what a medatag is?
A I've heard the word. I don't get involved with that.
Q Would Mr. Sagarin be the one who's responsible for the content of the website's

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medatags?
A I think mostly, yes.
Q You understand what a medatag is, you just don't --
A If you ask the me the purpose of a medatag, I couldn't give you a definition, no.
MR. COLEMAN: Do you want to take five?
(A recess was taken.)
Q Back to Mr. Sheehan and the swap with Yucatan products.
A Yes.
Q How did that turn out?
A Well, he didn't need as many supplements as we did tanning lotions, so he began ordering the lotions for us.
Q Did you have discussions with Mr. Sheehan about what you guys were going to do with the products?
A You mean right now or originally when I first --
Q Original when you obtained them?
A Not that I know of. If there was any, I had no part of it.
Q Since that time, did you have

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discussions Mr. Sheehan about what you were doing with the products?
A Yes.
Q What have been the substance of those conversations?
A Not much. We needed to sell it on the Internet and that's it. Okay. I'll order for you.
Q When did you first tell Mr. Sheehan that you were buying the products or the tanning lotions to sell on the Internet?
A I wasn't the first one to tell him that we were doing that, so I don't know what his initial reaction was or anything. I don't know.
Q Who was the first person who told him that?
A Larry.
Q Do you know when Larry Sagarin told Mr. Sheehan that you were purchasing the tanning lotions to sell on the Internet?
A I'm pretty certain right away.
Q Sometime around May of 2003?
A No. May of 2003 was when we first started with the website.

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Q I'm sorry.
A Lotions weren't on there until December '03, '04 or something like that.
Q But in any event, your testimony is that you told Mr. Sheehan pretty much from the beginning what you're doing with the tanning lotions?
A No, I didn't tell Mr. Sheehan anything in the beginning. But over conversations, the multiple conversations I've had with Mr. Sheehan between now and 2004 I'm sure it's come up that I'm buying it to sell on the Internet. It's no secret.
Q Has S&L Vitamins made any attempts to purchase the product directly from a distributor?
A No.
Q Why not?
A We weren't really buying much early on. We liked Danny. We liked the relationship with Danny. Shortly thereafter, we had received our cease and desist letter from Australian Gold.
Q What was the terms of the deal between Danny after that initial swap of products? You said that you needed more lotions and he needed

supplements, so what price did he sell the lotions to you for?
A 20 percent off cost.
Q So if he received an invoice from a distributor, he'd just mark it up 20 percent and sell it to you?
A Correct.
Q Did he give S&L Vitamins a copy of his invoice to show what he paid for it?
A Yes.
Q How did those transactions just generally work? Let's take one from the beginning, you need products from Mr. Sheehan and Yucatan; what did you do to place an order?
A Look at the shelves, see what we need. Call him on the phone, give him the order over the phone. 1, 2, 3 days later, it shows up. He calls us up, it's here. We go over and pick it up.
Q The order was always placed by Mr. Sheehan and the products were shipped from the distributor to his store, the products weren't shipped to S&L Vitamins' location?
A No, never.

Q At what point in time did he show you an invoice for the orders?
A Me personally or when it was first being started?
Q Is there a difference?
A There is a difference, yes. In the beginning, I wasn't picking the products up, so I didn't see invoices, I don't know.
Q In the beginning, who was picking up the products for S&L Vitamins?
A Larry.
Q And do you have any knowledge of what Mr. Sagarin did with respect to picking up the products from Mr. Sheehan?
A Goes to his store, picks it up, puts it in his car. I assume they look at the invoice together. They multiply it by 1.2, write a check, call you in a couple of days.
Q Your dealings with Mr. Sheehan picking up the products, were they any different than what you described?
A Now we just take the whole box with us, invoice and all so we can check it and then we send the invoice back to him with the check.

Because it has changed it's not only 20 percent right now, it's 10 percent on some, 20 percent on others, so --
Q So if I understand correct, he'll place an order for -- let's just pick a supplier. Future Industries, are you familiar with Future Industries?
A I've heard of them, yes.
Q And Future Industries is a distributor of tanning lotions, correct?
A As far as I know.
Q And so Mr. Sheehan, let's say, would place an order with Future Industries, he would get it in and your testimony is he would call you up and say, I have your order, it's here for you to pick up?
A Right.
MR. COLEMAN: Object to the form, though. There's been no testimony that Sheehan did buy from Future Industries. This is just a hypothetical.
MR. MATTHEWS: Just a hypothetical. Just using an example for that. And we'll get some testimony on that later, Ron.

MR. COLEMAN: I'll be here.
MR. MATTHEWS: I know. Much to your chagrin, but it's a beautiful day with a nice view.
Q You go to Mr. Sheehan's place of business, correct?
A Yes.
Q And you take the entire order, tanning lotion and the cases and all as they were shipped from the distributor to Mr. Sheehan, correct?
A Unless in some cases Danny has ordered some things for himself as well, he'd take it out before we picked it up, yes.
Q But if not, you get the entire shipment from the distributor to Yucatan, Mr. Sheehan, and take that product along with the invoice back to your store where you'd check it in?
A Correct.
Q Make sure you didn't get shorted or there was an overage?
A Right.
Q If the order was acceptable and everything was right, you send the invoice back along with the check at the appropriate

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percentage either 20 percent over or 10 percent over, depending on the product?
A That's correct.
Q What products are 10 percent above Mr. Sheehan's cost and what products are 20 percent?
A All ETS products are 20 percent.
Q ETS, you mean the Australian Gold Swedish Beauty and Caribbean Gold?
A That's correct.
Q Who is the 10 percent?
A Other lotion lines.
Q Why is there a premium on the Australian Gold -- and ETS, for the record, was the predecessor to Australian Gold that used to distribute the products. So may we say ETS?
A I apologize.
Q It's interchangeable, but I'm going to try to keep the record clean and say Australian Gold.
Why is there a difference between Australian Gold and other manufacturers?
A There is more competition on the Internet with some other manufacturers. So in

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order to be competitive with those pricings, we had to cut it down to 10 percent.
Q So with respect to Australian Gold products, you're saying there's not as much competition on the Internet?
A At the time, there was less than others.
Q Your testimony is there was less websites selling Australian Gold products than other manufacturer's products?
A At this time that we're speaking of right now, there were less websites selling Australian Gold products than there were other certain types of lotion products, yes.
Q What timeframe are we talking about, I want to be clear on the record on that?
A Last year, the year before last.
Q Has anything changed as we sit here on March 1, 2006?
A Absolutely.
Q What's changed?
A A ton of competition.
Q When did that competition start and where is it coming from? Two-parter, if you will.

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MR. COLEMAN: Object to the form. Asking a compound question.
MR. MATTHEWS: Let the record show there is laughter in the room.
A Please repeat the question.
Q Yes. Let's break it up. Where is the competition coming from now that wasn't there last year?
A Other websites, Ebay is a tremendous competitor, tremendous competitor. They get bigger and bigger and bigger. Other websites that look and do exactly the same thing that we do. Any given day, you'll find a whole bunch.
Q Are there any competitors that you've identified or targeted and said this is a website or an Ebay seller that we have to watch --
A Of course.
Q -- who are your competitors?
A Well --
MR. COLEMAN: Sure.
A Ebay, number 1. I mean, type in Australian Gold on Ebay search, you'll get about 2,000 or 3,000 listings, that's just Australian Gold. That's not Swedish Beauty, Caribbean Gold,

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World Class Nutrition.
Q Is that a website, World Class Nutrition?
A I'm sure you're familiar with World Class Nutrition.
Q Actually, I'm not. Who is World Class Nutrition?
A World Class Nutrition is a competitor of ours. They do have the whole line of Australian Gold products, Swedish Beauty products, with a statement saying that they have agreed with Australian Gold to stop selling the product as soon as they run out of inventory.
And that note has been up there for months and months. And they haven't changed any item.
Q When did you first recognize World Class Nutrition as a competitor of yours.
A I would say this time last year. There are others.
Q Is World Class Nutrition selling the 2006 product line?
A I don't know.
Q Have you checked or --

A I haven't checked in the past few days. I don't know if they are selling 2006. I know they're selling everything else.
In my experience, everything else sells better than the 2006 line anyway, so that's what I'm concerned about moreover.
Q Any other competitors that has cost more competition to you?
A If I can jump on her computer, I can probably find about 15 websites in about 10 minutes.
Q As we sit here, any others that are significant that you can think of?
A Not that I care to say.
Q What do you mean by that, that you care to say? I don't understand what your issue is, you don't want to rat out somebody else that you're in business with or you're talking with?
A I'm not talking with anybody. I do view other people just to find out as far as pricing, where do I need to be to be competitive. Internet Tan is one, Lotions for You.
I mean, because I don't want to say it because I look at other websites that do not

carry the Australian Gold line for pricing on other manufacturers as well. So I don't want to give a name and be incorrect. But there are --
MR. COLEMAN: Steve, you just give the best testimony you can. These are questions that you do have to answer. There's no privilege attached to them.
A I would like to say, I think, like Lotions for You may, but --
MR. COLEMAN: We'll be clear. No one's getting sued on the basis of your testimony except you.
MR. MATTHEWS: That's actually incorrect, but --
A Internet Tanning. There's Lotion Source, Lotions View, Tanning Lotion Warehouse. There's a litany of them.
Q Is anything with respect to your pricing from Mr. Sheehan changed as far as the percentage he'll sell Australian Gold products to you?
A It has at this point, yes.
Q How has that changed?
A Now he gives 10 percent on everything.
Q What was the effective date of 10

percent on everything?
A I'm not sure.
Q Last couple of months?
A Last couple of month.
Q Who negotiated the better deal for S&L Vitamins with Mr. Sheehan?
A I did.
Q What was the nature of that conversation with Mr. Sheehan regarding the pricing?
A We had helped Danny out on a personal matter and that is how he's paying us back.
Q What kind of personal matter did you help Mr. Sheehan out with?
A His personal matter is something that I need to answer?
Q Yes.
MR. COLEMAN: Yes.
A Danny needed some help with his legal bill.
Q His legal bill, what kind of legal expenses did he incur?
A The subpoena that showed up at his door from Australian Gold.
Q Are you paying Mr. Sheehan's legal fees?

A No, we're not. We gave him a loan.
Q How much did you give him a loan for?
A $7,000.
Q What are the terms of repayment on the loan?
A Went down from 20 percent to 10 percent.
Q Have you committed to buy a certain amount of product from Mr. Sheehan?
A Well, as much as I possibly can. I want that money back.
Q But how would the $7,000 principal amount on the loan be credited as being repaid?
A Well, when I pay him the 10 percent, I figure out what the other 10 percent that he would have gotten and I keep track.
Q I see.
A Gentlemen's agreement.
Q What happens after the $7,000 is repaid?
A Hopefully this will be over with by then.
Q But I mean, are you going to go back to 20 percent?
A Probably.
Q Did Mr. Sheehan approach you about

needing a loan to pay legal fees?
A I don't exactly remember how that conversation came about.
Q Did you call him and say, hey, you need money?
A Of course not.
Q So he contacted you then?
A I don't know if he actually said to me, hey, I need money. I think with his own legal situation in this matter, he basically said that he was involved personally and he didn't have any money to defend himself. And I would do whatever I had to do to help him out.
Q To pay for his defense?
A Not to pay for him, but help him out.
Q But to be clear, it was just S&L Vitamins wrote him a check for $7,000, how did that money transfer?
A It was a credit card. I don't have $7,500 anyway.
Q It was $7,500?
A $7,500, I'm sorry.
Q Have you ever had any conversations with Australian Gold directly?

A I have not, no.
Q Has Mr. Sagarin had any conversations?
A I believe so.
Q Who has he spoken with at Australian Gold?
A I know he spoke to the president of the company, Trevor.
Q Trevor Gray?
A Yes. I don't know what his position is.
Q When did Mr. Sagarin speak with Trevor Gray?
A I don't know exactly when it was. I believe he called Larry.
Q Did Larry tell you what the substance of that conversation was?
A Yes.
Q What was the nature of that conversation?
A If you stop selling the product today, we'll leave you alone.
Q What was Mr. Sagarin's response?
A He said that we're not doing anything wrong. We're buying from tanning salons. We've never owned a tanning salon and there's nothing

wrong with me doing it.
Q Did Mr. Sagarin tell Mr. Gray what tanning salons he was buying from?
A Of course not.
Q Why not?
A Because Mr. Gray would probably cut off the tanning salon.
Q Why do you think Mr. Gray would cut off the tanning salon, why do you say that?
A I don't know what he would do. I'm not Mr. Gray. I don't know Mr. Gray. I've never spoken to Mr. Gray. I've never spoken to Mr. Gray.
I don't know what he would do. But it was my assumption that if he had an opportunity to stop selling, I've seen a "do not sell" list running around, it would be my assumption that to prevent us from getting the product.
Q Do you understand that Australian Gold does not want its product to be sold on the Internet?
A Well, I had gotten a cease and desist letter in early 2004, so from that point, that was when I had known. After that, we sought

legal counsel, this is early 2004. Letters went back and forth between the two firms.
Ending within a matter of weeks, I believe with Australian Gold saying that we were doing nothing wrong and dropped everything. Left us alone for at least a year and now here we are.
Q How many "do not sell" lists have you seen?
A I've seen a copy of, I think, one.
Q Do you still have a copy of it?
A No, I don't. I don't really care about it.
Q When did you see it, how many months ago was that?
A I don't know. 2 months ago, maybe.
Q Who showed it to you?
A A month or two ago. Larry.
Q How did Larry get it, do you know?
A No.
Q Has Mr. Sheehan been able to provide you with any Australian Gold or Swedish Beauty or Caribbean Gold that you've needed?
A Has he been able to?
Q Yes.

A I don't understand the question.
Q Are there any products that Mr. Sheehan cannot provide S&L Vitamins either because he can't get them or people won't sell them?
A Some of the SPF line.
Q The SPF line being the outdoor products?
A Yes.
Q Other than the SPF line, are there any other products that Mr. Sheehan cannot provide you?
A No. Not that I can think of.
Q Where have you gone to get the SPF products?
A Plaza Sports.
Q Now Plaza Sports is not a tanning salon?
A No.
Q So you stated in this lawsuit you only buy products from tanning salon, so that's not correct?
MR. COLEMAN: I'll object to the form. That wasn't his testimony. His testimony was referred to --
MR. MATTHEWS: Just object to the form, Ron, and --

A We buy indoor tanning lotions from tanning salons.
Q And the SPF line, you buy from Plaza Sports?
A Correct.
Q Do you buy it from anyplace else?
A No.
Q In your inventory, do you have SPF products available?
A Aside from the 8, 15, 30 lotion that we can get from the tanning salons, is that what you're asking?
Q I think just actually picked up on a good nuance. There's some SPF products that you can't get from retail tanning salons?
A Right. I think I have probably about three bottles of an SPF 6 spray.
Q Why don't we identify the SPF products that you can purchase from a retail salon?
A From the tanning salons, the SPF 8, 15 and 30 lotion.
Q What are the SPF products that you cannot purchase from a tanning salon?
A SPF sprays. That's it.

Q Which are what? There's different SPF, aren't there?
A There's quite a few different products, yes.
Q And what are those products, just all the spray products?
A Yes.
Q And those products, the spray products, are purchased from Plaza?
A They were, yes.
Q Who are they being purchased from now?
A They're not.
Q And why not?
A Ever since the subpoenas came out, we haven't spoken to Plaza Sports since.
Q Why not?
A We were embarrassed. I didn't think he wanted to do business with us. It wasn't really that great of a seller for us, so we just sold out of the inventory. As of right now, most of those products are unorderable on our website.
Q Did Plaza Sports ever tell you that we won't do business with you because of the subpoenas or because of this lawsuit?

A Not to me, they never did.
Q Did they tell it to anyone else?
A I don't know.
Q Has there been any supplier who has refused to sell you products since this lawsuit or since the subpoenas that Australian Gold sent out?
A No, they have not.
Q Has your business been crippled by Australian Gold serving subpoenas or contacting the suppliers to learn about your activities?
A I think so.
Q How is it being crippled?
A Well, that's the reason why we do not order to Plaza Sports. I've never spoken to the guys at Plaza Sports before. I don't know them.
Q So Plaza Sports has never told you we won't sell to you because of this lawsuit or because of Australian Gold's tactics?
A That's correct. They never did say it, but we didn't want to get them involved any further.
Q Why not?
A We didn't buy much from them. We didn't